

### Remarks

The Applicants have amended Claims 9 and 18 to recite “a bamboo pulp filament.” This is a clarifying amendment and support can be found throughout the Applicants' Specification such as on page 7, line 3.

Claims 20-26 which were previously withdrawn have been cancelled without prejudice and without disclaimer of the subject matter therein. The Applicants reserve the right to file one or more divisional applications directed to the subject matter of those claims.

Claim 10 stands rejected under 35 USC §112, second paragraph, as being indefinite. The Applicants note with appreciation the Examiner's helpful comments with respect to the upper end of the specified range of  $\alpha$ -cellulose component. The Applicants have accordingly amended Claim 10 so it recites a range of 85 wt% to 87.5 wt%. This is in accordance with independent Claim 9. Withdrawal of the rejection is respectfully requested.

Claims 9-13 and 15-20 stand rejected under 35 USC §102 as being anticipated by Nakagawa. The Applicants note with appreciation the Examiner's detailed comments hypothetically applying Nakagawa to those rejected claims. The Applicants respectfully submit that the rejection is based on a fundamental error in the interpretation of Claims 9 and 18, in particular, and respectfully submit that Nakagawa is inapplicable to those claims. Details are set forth below.

The majority of the rejection focuses on the alleged presence of process and product-by-process language in the solicited claims. The Applicants respectfully submit that this is erroneous. For the record, the Applicants note that both independent Claims 9 and 18 recite:

...a yarn containing a bamboo pulp filament having about 80 wt%  
to about 87.5 wt% of an  $\alpha$ -cellulose component...

The Applicants respectfully submit that there is not a single word of process language or

product-by-process language in Claims 9 and 18. Thus, the emphasis on process and product-by-process language in the rejection is not understood and believed to be erroneous. The fact is that there is no process language and no product-by-process language in Claims 9 and 18. The Applicants respectfully submit that the rejection must fail on this basis alone.

The rejection is also based on an alleged inherency of the presence of  $\alpha$ -cellulose in the amount of about 80 wt% to 87.5 wt% in Nakagawa. Before addressing the merits or lack thereof of the disclosure of Nakagawa, the Applicants note that a rejection based on inherency must demonstrate that the claimed inherent characteristic is “necessarily” present in the prior art. It is not enough that the claimed characteristic might be present or could be present or might even likely be present. It must “necessarily” be present.

The Applicants respectfully submit that there is no evidence on this record based on the disclosure of Nakagawa that the yarns of Nakagawa would include filaments having about 80 wt% to about 87.5 wt% of an  $\alpha$ -cellulose component. This is mere speculation. This is true for two reasons. First, Nakagawa does not disclose the amounts of  $\alpha$ -cellulose component at all. Thus, the rejection must rely on speculation or guesswork that the Nakagawa filaments would have the claimed amount of  $\alpha$ -cellulose component. However, there is a serious problem with such speculation or guesswork inasmuch as Nakagawa fails to disclose a bamboo pulp filament. In fact, there is no mention of bamboo at all in Nakagawa. Instead, Nakagawa discloses completely different types of filaments. In particular, Nakagawa discloses lyocell fibers. These are fibers made from wood pulp. Wood pulp or lyocell fibers are not the same as the claimed bamboo pulp filaments. Thus, in the absence of any disclosure whatsoever concerning bamboo pulp filaments, it is mere speculation that wood pulp or lyocell fibers disclose an  $\alpha$ -cellulose component content that is the same as the Applicants’ claimed content of about 80 wt% to about

87.5 wt%.

To reinforce this point, the Applicants conducted a brief search for  $\alpha$ -cellulose contents for several materials other than bamboo. The Applicants enclose excerpts from three separate publications both before and after the effective filing date of this application showing that the  $\alpha$ -cellulose content for wood and cotton pulps is far higher than that recited in the Applicants' Claims 9 and 18. Those excerpts are attached as Exhibits A, B and C.

Therefore, the Applicants respectfully submit that the record prior to now contains no evidence that the Applicants' claimed bamboo filament having about 80 wt% to about 87.5 wt% of an  $\alpha$ -cellulose component is present based on Nakagawa. The Applicants also respectfully submit that this record now contains evidence that the typical wood and cotton  $\alpha$ -cellulose components is higher than that of the Applicants' claimed bamboo pulp filaments. As a result, the Applicants respectfully submit that the rejection has not demonstrated that the Applicants' claimed  $\alpha$ -cellulose component amount is "necessarily" present in Nakagawa. In fact, the Applicants have factually demonstrated that the  $\alpha$ -cellulose component content of the fibers of Nakagawa is more than likely outside of the Applicants' claimed  $\alpha$ -cellulose component content range. Withdrawal of the rejection on this basis is also respectfully requested.

However, there is still more. Assuming *arguendo* that the comments in the rejection with respect to process and product-by-process language are valid, the Applicants respectfully submit that the rejection would still fail to meet the requirements for anticipation under §102. Assuming that the materials of Nakagawa were employed in the same manner as the bamboo pulp is employed with respect to the production of filaments, the Applicants respectfully submit that the result of that process would still conclude with different products. That is because the starting materials between the Nakagawa disclosure and the Applicants' bamboo starting materials are

completely different and have different characteristics. Those differences as provided in the starting materials carry through to the final product in each case, irrespective of whether the methodology employed on the different starting materials is the same.

As a consequence, the Applicants respectfully submit that the different starting materials having different starting characteristics would result in final products having different characteristics and not inherently the same characteristics as speculated in the rejection. Withdrawal of the §102 rejection based on Nakagawa is accordingly respectfully requested.

In light of the foregoing, the Applicants respectfully submit that the entire Application is now in condition for allowance, which is respectfully requested.

Respectfully submitted,



T. Daniel Christenbury  
Reg. No. 31,750  
Attorney for Applicants

TDC/vp  
(215) 656-3381